

infringement theories remain in the case. Thus, H&P requests its Motion to Strike be briefed on an expedited basis.

This Court has previously granted a motion for expedited briefing when it impacted a party's preparation before a deadline in the case. *See* Mot. for Expedited Briefing of Emergency Mot. to Strike, *Dr. Ford Albritton IV v. Acclarent*, 3:16-cv-03340-M ECF No. 155 (N.D. Tex. 2019) (arguing for expedited briefing because the outcome of the motion would “drastically impact the preparation of and content contained in [the expert’s] responsive expert report on the issue of validity”); *see also* Order, *Dr. Ford Albritton IV v. Acclarent*, 3:16-cv-03340-M ECF No. 158 (N.D. Tex. 2019) (granting in part the motion for expedited briefing). Considering expert discovery closes on May 19th, granting H&P’s request for expedited briefing would allow the issue to be ripe for decision with time for the Court to consider it prior to that deadline. Additionally, the outcome of H&P’s Motion to Strike will also have profound impact on briefing for any motion for summary judgment because it will be determinative of what theories are properly alleged.

H&P’s proposal outlines the same timeframe that the Court provided for Nabors’ Motion to Expedite Briefing on its Motion to Compel:

Event	Proposed Schedule
Filing Date of H&P’s Emergency Motion to Strike Portions of Nabors’ Infringement Expert Report Expressing New Infringement Theories	March 22, 2023
Deadline for Nabors Response	April 6, 2023
Deadline for H&P’s Reply (if any)	April 13, 2023

For Nabors’ Motion to Compel, the Court granted the motion providing 15 days for a response and 7 days for a reply. ECF Nos. 201 (Nabors’ Motion to Expedite, filed on March 2) and ECF No. 205 (Order granting Nabors’ Motion to Expedite, indicating a response on March 17 and Reply on March 24). Indeed, the issues in Nabors’ Motion to Compel and H&P’s Motion to Strike are

intertwined such that they should be considered in parallel. For example, H&P refused Nabors' request for additional source code printouts in part because "[t]he additional source code printouts only relate to theories irrelevant to Nabors' final infringement contentions." *See* ECF No. 206, 14-17 (explaining the relationship between Nabors source code requests and its final infringement contentions). Thus, the issues related to Nabors' Motion to Compel are *directly related* to the issues raised in H&P's underlying Motion to Strike.¹

Nabors is not prejudiced by H&P's request for expedited briefing. As explained in H&P's Motion to Strike, Nabors has had the information used to form these new infringement theories for years, but H&P has only had notice of them for mere weeks. ECF Nos. 209-210. Further, Nabors has been on notice since the meet and confer on Nabors' Motion to Compel on February 28, 2023 that if Nabors included new theories, H&P would move to strike those. Nabors has had almost a month to consider how its theories are allegedly timely, such that over two weeks to respond to a motion to strike is sufficient here. However, the longer Nabors' *untimely* infringement theories stay in the case, the more resources H&P will be forced to divert away from defending against Nabors' *timely* infringement theories and H&P's own case against Nabors.

Considering the May 19th close of expert discovery, the interrelatedness of the issues raised by H&P's underlying Motion to Strike and Nabors' Motion to Compel (for which the Court has already granted expedited briefing), and the disparity in harm to the parties based on the amount of time Nabors' untimely infringement theories remain in the case, H&P respectfully

¹ Expedited briefing for this motion is made more necessary by the expedited briefing schedule and interrelatedness of Nabors' Motion to Compel as discussed. However, despite seeking agreement from H&P to expedite briefing for its motion to compel, Nabors opposes H&P's motion for the same.

requests the Court grant its Motion for Expedited Briefing of its Motion to Strike Portions Of Nabors' Infringement Expert Report Expressing New Infringement Theories.

Dated: March 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

/s/ Douglas M. Kubehl

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